

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOE LEWIS GONZALEZ and
ROSA E. FLORES-GONZALES
Plaintiffs,

v.

BIRDS EYE VIEW TRUCKING, LLC
and ROY DAVID BIRDSONG, III
Defendants.

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CIVIL ACTION NO. 5:21-cv-704

JURY TRIAL REQUESTED

**DEFENDANTS BIRDS EYE VIEW TRUCKING, LLC AND ROY DAVID BIRDSONG'S
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C §§ 1332(a), 1441, and 1446, Defendants BIRDS EYE VIEW TRUCKING, LLC and ROY DAVID BIRDSONG, III, hereby give notice of the removal of this cause of action to the United States District Court for the Western District of Texas, San Antonio Division. Defendant BIRDS EYE VIEW TRUCKING, LLC and ROY DAVID BIRDSONG, III state as grounds for removal the following:

PROCEDURAL STATUS OF THE CASE

1. Plaintiffs, JOE LEWIS GONZALEZ AND ROSA E. FLORES-GONZALEZ filed their Original Petition in the 281st Judicial District Court of Frio County, Texas on June 2, 2021. It carries the case style of Cause No. 21-06-00184CVF; *Joe Lewis Gonzalez and Rosa E. Flores-Gonzalez v Bird's Eye View Trucking, LLC and Roy David Birdsong, III*; In the 281st Judicial District Court of Frio County, Texas.

2. The Judicial District Clerk of Frio County, Texas issued its citations to Bird Eye View Trucking, LLC and Roy David Birdsong on or about June 3, 2021.¹

3. Birds Eye View Trucking, LLC and Roy David Birdsong, III are filing this Notice of Removal within 30 days of Defendant Birdsong's receipt of Plaintiff's Original Petition, which was served on or about June 28, 2021, and prior to filing an Original Answer. Additionally, Birds Eye View Trucking has not been properly served at this time, thereby this Notice of Removal is still filed timely.

4. All pleadings, process, orders, and other filings in the state court action accompany this notice. *See* 28 U.S.C. § 1446(a).

5. This Notice of Removal is being filed in the record office of the Clerk of the United States District Court for the Western District of Texas, San Antonio Division.

6. Defendant will promptly file a copy of this Notice of Removal with the Frio County District Clerk.

BACKGROUND

7. This case arises out of a motor vehicle accident that occurred in or around Frio County, Texas on August 27, 2019. The drivers involved in the collision were: Plaintiff, Rosa Elva Flores de Gonzalez and Defendant, Roy David Birdsong, III. Plaintiff Joe Lewis Gonzalez was a passenger in the vehicle operated by Plaintiff Rosa Elva Flores de Gonzalez. Plaintiffs claim that they suffered personal injuries as a result of the alleged negligence of Defendant, Roy David Birdsong, III.

8. Upon information and belief, the Plaintiffs, currently reside in Maverick County, Texas and are citizens of the State of Texas.

¹ *See* Ex. D (Roy David Birdsong, III was personally served on or about June 28, 2021); Defendant Birds Eye Trucking, LLC has not yet been served.

9. Defendant Birds Eye View Trucking, LLC is a limited liability corporation organized in Louisiana and with its principal place of business located in the State of Louisiana.²

10. Defendant Roy David Birdsong, III resides in New Orleans, Louisiana and is a citizen of the State of Louisiana.

BASIS FOR ORIGINAL FEDERAL COURT JURISDICTION

11. Plaintiffs demand judgment in an amount over \$1,000,000³ and the Plaintiff and the Defendants in this matter are citizens of different States. The United States District Court therefore has original jurisdiction of this matter according to 28 U.S.C § 1332(a).

PROPRIETY OF REMOVAL

12. Defendant Roy David Birdsong, III was served with Plaintiff's Original Petition on or around June 28, 2021. Birds Eye View Trucking, LLC has not been served with Plaintiff's Original Petition. This Notice of Removal is timely because it is filed within thirty (30) days of Defendants receipt of the Plaintiff's Original Petition, in accordance with 28 U.S.C § 1446(b).

13. Both Birds Eye View Trucking, LLC and Roy David Birdsong consent to removal and are joining in this removal. 28 U.S.C. § 1446(b)(2)(A).

14. This court has original jurisdiction of this matter under 28 U.S.C § 1332(a).

15. Except as otherwise expressly provided by an Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed to the district court of the United States for the district and division embracing the venue where the state court action was pending. *See* 28 U.S.C § 1446(a). The state court action that is the subject of this notice of removal is pending in Frio County, Texas, which is found in the

² *See* Ex. F (Birds Eye View Trucking, LLC's registration in Louisiana).

³ *See* Ex. C (Plaintiff's Original Petition).

Western District of Texas, San Antonio Division. Therefore, venue of this removed action is proper in this Court and Division.

16. Removal is not barred by 28 U.S.C. § 1445. Defendant Roy Birdsong, III is not a citizen or resident of the State of Texas, so removal is not prohibited by 28 U.S.C. § 1441(b). Defendant Birds Eye View Trucking, LLC, is a corporation organized in Louisiana and with its principal place of business located in the State of Louisiana.

17. Pursuant to 28 U.S.C § 1446(a) and Rule 81 of the Federal Rules of Civil Procedure, Defendants have attached hereto:

- (1) A list of all parties in the case, their party type, and the current status of the removed case;
- (2) A civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action; all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court (if any);
- (3) A complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number, and part or parties represented by him or her;
- (4) A record of which parties have requested trial by jury; and
- (5) The name and address of the Court from which the case is being removed.

REQUEST FOR HEARING AND JURISDICTIONAL DISCOVERY

18. If Plaintiffs Joe Lewis Gonzalez and Rosa E. Flores-Gonzalez contest this removal, Defendants request:

- a. A hearing regarding this Court's jurisdiction over, and the propriety of removal of, this matter;
- b. The opportunity to present evidence demonstrating the existence of federal jurisdiction and the propriety of removal; and
- c. Leave to conduct limited discovery related to those issues.

JURY DEMAND

19. Defendant demands a jury trial.

WHEREFORE, PREMISES CONSIDERED, Defendants Birds Eye View Trucking, LLC and Roy David Birdsong, III, remove the above captioned action from the 281st District Court of Frio County, Texas to the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully submitted,

THE FUENTES FIRM, P.C.

/s/ David Helmey

DAVID P. HELMEY

State Bar No. 24092504

Federal Bar No. 2790922

AUTUMN DELEE

State Bar No. 24120542

5507 Louetta Road, Suite A

Spring, Texas 77379

Telephone: (281) 378-7640

Facsimile: (281) 378-7639

david@fuentesfirm.com

autumn@fuentesfirm.com

ATTORNEY FOR DEFENDANTS

BIRDS EYE VIEW TRUCKING, LLC

AND ROY DAVID BIRDSONG, III

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per W. Dist. Tex. Loc. R. LR5.1. A true and correct copy of the foregoing Defendant's Notice of Removal was served upon counsel of record in compliance with the Federal Rules of Civil Procedure by certified mail, return receipt requested, telephonic communications, hand delivery and/or U.S. Mail on this 23th day of July 2021.

/s/ David Helmey

DAVID HELMEY